

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

DEREK WILLIAM BROWN, #1987097	§	
v.	§	CIVIL ACTION NO. 6:18cv209
DALE WAINWRIGHT, ET AL.	§	

ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRTE JUDGE

Plaintiff, Derek William Brown, an inmate formerly confined at the Estelle Unit within the Texas Department of Criminal Justice (TDCJ) proceeding *pro se* filed this complaint under 28 U.S.C. §1983 complaining of alleged violations of his constitutional rights through a purported excessive use of force occurring at the Coffield Unit. The lawsuit was referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and (3) as well as the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On May 21, 2019, Judge Love issued a Report (Dkt. #93) recommending that Defendant Kemp's motion for summary judgment (Dkt. #75) be granted in part and denied in part. Specifically, Judge Love recommended that Defendant's motion be granted for any claims for monetary damages against him in his official capacity, but recommended that the motion be denied in all other respects. A copy of this Report was sent to both parties.

However, no objections to the Report have been filed. While Plaintiff Brown filed a letter to the Court (Dkt. #95) expressing concern that Defendant Kemp's motion for summary judgment was "upheld," Judge Love recommended that the motion be granted in part and denied in part. The motion is not being "upheld."


Because no objections to Judge Love's Report have been filed, both parties are barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Auto. Ass'n.*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). Accordingly, it is

ORDERED that the Report of the United States Magistrate Judge (Dkt. #93) is **ADOPTED** as the opinion of the court. Further, it is

ORDERED that Defendant Kemp's motion for summary judgment (Dkt. #75) is **GRANTED** for any claims for monetary damages against Defendant Kemp in his official capacity. In all other respects, the motion is **DENIED**. Plaintiff Brown's excessive force claim against Defendant Kemp will proceed before the court.

SIGNED this the 29th day of September, 2019.



RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE